

No. 18-60522

**IN THE
United States Court of Appeals for the Fifth Circuit**

DISH NETWORK CORPORATION,
Petitioner-Cross-Respondent,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent-Cross-Petitioner,

On Petition for Review of the Order of the
National Labor Relations Board, Case Nos.
16-CA-173719, 16-CA-
173720, 16-CA-173770, 16-CA-177314,
16-CA-177321, 16-CA-178881,
and 16-CA-178884

**UNOPPOSED MOTION
FOR EXTENSION OF TIME TO FILE
REPLY BRIEF**

Pursuant to Fifth Circuit Rule 31.4.4, Petitioner-Cross-Respondent DISH Network Corporation respectfully requests a 21-day extension of time, to and including March 18, 2019, to file its reply brief. Counsel for Respondent National Labor Relations Board and Intervenor Communications Workers of America both consent to the motion.

In support of this motion, DISH states as follows:

1. DISH's reply brief is currently due on February 25, 2019.

The requested extension would cause DISH's brief to be due on March 18, 2019. DISH previously requested and received a 40-day extension to file its opening brief. Respondent-Cross-Petitioner National Labor Relations Board requested and received a 40-day extension to file its responsive brief. DISH did not oppose that request.

2. An extension is justified due to the confluence of multiple and complicated issues in the appeal and multiple overlapping and conflicting deadlines in other matters.

3. During the time period that the reply must be briefed, undersigned counsel have obligations in a variety of matters that have been or cannot be extended and cannot be transferred to other attorneys. Those obligations include the reply brief in *Krakauer v. DISH*, No. 18-1518, due to be filed in the Fourth Circuit on February 19, 2019. This appeal involves a class of more than 18,000 members raising claims under the Telephone Consumer Protection Act. The appeal follows four years and three stages of litigation in the district court (class certification, trial, and post-trial proceedings) and features

a record of more than 10,000 pages. In addition, the opening brief in *Credit Suisse AG v. Claymore Holdings LLC*, No. 18-0403, is due to be filed in the Supreme Court of Texas on February 28, 2019. This appeal involves five different claims, follows two trials resulting in two different verdicts, and features a record of more than 15,000 pages.

4. In addition to these imminent deadlines, undersigned counsel have significant ongoing obligations in matters including the following: *In re: Chinese Manufactured Drywall Products Liability Litigation* (MDL No. 09-2047; 5th Cir. No. 18-30742). Undersigned counsel is lead appellate counsel for multiple defendants in this large multidistrict litigation, in which hundreds of cases have recently been remanded to various federal district courts. The case has a massive record spanning nine years of litigation. An appeal presenting multiple issues of personal jurisdiction is now awaiting briefing in this Court. Undersigned counsel also have ongoing obligations in *Naim v. Chevron-Phillips Chemical Co.* (Del. S. Ct. No. 629, 2018). Undersigned counsel represents appellee in this appeal from a jury verdict rejecting a plaintiff's claims stemming from alleged asbestos exposure. Counsel anticipates a briefing deadline in early April 2019.

5. An extension is further justified by the complexity of this appeal. Underlying this appeal is a final decision of the National Labor Relations Board finding that DISH and the union were not at an impasse before DISH instituted a new compensation plan and, separately, that DISH constructively discharged 17 employees. Both findings raise significant legal issues on which the Board has a robust body of decisional law and also present challenges based on a record exceeding 1,000 pages and a multi-year history of collective bargaining.

6. Finally, an extension is appropriate because Intervenor's brief, to which DISH also must respond, is not due until February 11, 2019.

7. Counsel of record in this case was counsel of record to DISH in a prior appeal to this Court (No. 17-10282) involving related proceedings and was counsel of record in the opening brief in this case.

8. On February 6, 2019, undersigned counsel communicated with David Casserly, counsel for the Board, and Matt Holder, counsel for the union. Mr. Casserly and Mr. Holder indicated that neither the Board nor the union oppose an extension of 21 days.

For the foregoing reasons the Court should grant DISH's motion for a 21-day extension to file its opening brief.

Respectfully submitted,

/s/ Eric A. Shumsky

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February 8, 2019

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on February 8, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ *Eric A. Shumsky*

Eric A. Shumsky

Counsel for Petitioner-Cross-Respondent

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this motion contains 640 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(a)(2)(B) and Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 5th Cir. R. 32.1 and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Century Schoolbook 14-point font.

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